

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 2**

**NEW YORK PRESBYTERIAN-HUDSON VALLEY
HOSPITAL**

Employer

and

Case No. 02-RC-229616

NEW YORK STATE NURSES ASSOCIATION

Petitioner

**DECISION AND ORDER SETTING ASIDE ELECTION AND DIRECTION AND NOTICE
OF SECOND ELECTION**

Pursuant to a petition filed by the New York State Nurses Association (“Petitioner”) on October 19, 2018¹ and a Stipulated Election Agreement approved by the Regional Director on October 29, a secret-ballot election was held on November 15 among the employees of the Employer in the following-described appropriate collective-bargaining unit:

INCLUDED: All full-time, regular part-time, and per diem Registered Nurses performing direct patient care duties, employed by the Employer at its facility located at 1980 Crompond Rd., Cortlandt Manor, NY 10567.

EXCLUDED: All other employees, including Nurse Educators, Nurse Practitioners, Employee Health Registered Nurses, Employee Health Nurse Practitioners, Quality Assurance, Patient Care Directors, Case Managers, Lactation Consultants, Operating Room Coordinators, Infection Control, Clinical Nurse Managers, Assistant Clinical Nurse Managers, managerial employees, confidential employees, office clerical employees, and guards, and professional employees, and supervisors as defined by the Act.

The per diem employees eligible to vote are those who have worked an average of four (4) hours or more per week during the 13 weeks immediately preceding the eligibility date for the election .

The tally of ballots after the election made available to the parties at the conclusion of the election shows that of the approximately 271 eligible voters, 230 cast ballots, of which 114 were

¹ All dates are 2018 unless otherwise noted.

cast for and 116 against the Petitioner. There were 8 challenged ballots, a number sufficient to affect the results of the election.

On November 23, both the Employer and the Petitioner filed timely objections to the conduct of the election. The objections are attached as Attachment A.

Pursuant to provision of Section 102.69 of the Boards Rules and Regulations, a preliminary investigation of the objections was conducted under my direction and supervision. After carefully considering the results thereof, I make the following report.

THE OBJECTIONS

The Employer and Petitioner each filed eight objections to the conduct of the election. Notably, the parties agree that severe inclement weather on the date of the election denied a determinative number of eligible voters an opportunity to vote in the election.

In its first objection, the Employer contends that severe winter storm and extremely unsafe road and travel conditions on the day of the election prevented a determinative number of voters an adequate opportunity to vote in the election. In its eighth objection, the Petitioner contends that weather conditions on the day of the election prevented a determinative number of eligible voters from reaching the polls to cast a vote.

In *Goffstown Track Center*, 354 NLRB 359 (2009), the Board, applying *Baker Victory Services*, 331 NLRB 1068, 1070 (2000), adhered to an objective standard for whether inclement weather conditions reasonably denied a determinative number of eligible voters an opportunity to vote in the election.

Evidence submitted by the Employer, including a Yorktown Police Department alert issued at 6pm on November 15 notifying motorists that road conditions are extremely slippery and multiple vehicles are stuck in roadways on several roadways, shows severe inclement weather prevented safe travel to the polls during the 6pm to 9pm poll session that day.

Based on this uncontested objective evidence, I conclude that there was severe inclement weather during poll hours on the date of the election, that a sufficient number of voters to affect the outcome of the election did not vote, and that their ballots could have affected the outcome of the election. Having found that this conduct standing alone warrants setting aside the election, I conclude that a rerun election is warranted.²

IT IS ORDERED that the election conducted November 15, 2018 be set aside and a second election will be held among the employees in the above-mentioned unit agreed appropriate in the Stipulated Election Agreement. The details of the election, voter eligibility, and requirements for the submission of a voter list are as follows.

NOTICE OF RERUN ELECTION

The National Labor Relations Board will conduct a rerun election among the employees in the same unit as in the first election. Employees will vote whether or not they wish to be represented for purposes of collective bargaining by New York State Nurses Association. The date, time and place of the election will be as follows:

DATE: **December 13, 2018**

HOURS: **6:00 a.m. to 9:00 a.m., 11:00 a.m. to 2:00 p.m., and
6:00 p.m. to 9:00 p.m.**

PLACE: **Ground Floor Conference Room at the Employer's facility
located at 1980 Crompond Road, Cortlandt Manor, NY.**

**PAYROLL PERIOD
FOR ELIGIBILITY:** **The payroll period ending immediately before the
date of this Notice of Second Election.**

² I do not reach Employer objections two through eight or Petitioner objections one through seven because I have concluded that a rerun election is warranted based on the common objection.

NOTICE TO ALL VOTERS

This is a rerun of the election conducted on November 15, 2018. The rerun election will be held in accordance with the terms of this notice of election. All eligible voters should understand that the National Labor Relations Act, as amended, gives them the right to cast their ballots as they see fit and protects them in the exercise of this right, from interference by any of the parties.

Eligible to vote in the rerun election are those employees in the unit who were employed during the payroll period ending immediately before November 30, 2018, including employees who did not work during that period because they were ill, on vacation, or temporarily laid-off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the date of the first election, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are: (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the date of the first election and who have been permanently replaced.

VOTER LIST

The Employer must provide the Regional Director and the Petitioner an alphabetized list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cell telephone numbers) of all eligible voters, accompanied by a certificate of service on all parties. When feasible,

the Employer must electronically file the list with the Regional Director and electronically serve the list on the Petitioner.

To be timely filed and served, the list must be *received* by the Regional Director and the parties by December 4, 2018. The list must be accompanied by a certificate of service showing service on all parties. The region will no longer serve the voter list. The Employer's failure to file or serve the list within the specified time or in the proper format is grounds for setting aside the election whenever proper and timely objections are filed. However, the Employer may not object to the failure to file or serve the list in the specified time or in the proper format if it is responsible for the failure.

Unless the Employer certifies that it does not possess the capacity to produce the list in the required form, the list must be provided in a table in a Microsoft Word file (.doc or docx) or a file that is compatible with Microsoft Word (.doc or docx). The first column of the list must begin with each employee's last name and the list must be alphabetized (overall or by department) by last name. Because the list will be used during the election, the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015.

When feasible, the list shall be filed electronically with the Region and served electronically on the Petitioner. The list may be electronically filed with the Region by using the E-filing system on the Agency's website at www.nlr.gov. Once the website is accessed, click on **E-File Documents** enter the NLRB Case Number, and follow the detailed instructions.

No party shall use the voter list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

NOTICE POSTING

The Employer must post copies of the Notice of Election in conspicuous places, including all places where notices to employees in the unit are customarily posted, at least 3 full working days prior to 12:01 a.m. on the day of the election and must also distribute the Notice of Election electronically to any employees in the unit with whom it customarily communicates electronically. In this case, the notices must be posted and distributed before 12:01 a.m. on December 10, 2018. The Employer's failure to timely post or distribute the election notices is grounds for setting aside the election if proper and timely objections are filed. However, a party is estopped from objecting to the non-posting or non-distribution of notices if it is responsible for the non-posting or non-distribution.

RIGHT TO REQUEST REVIEW

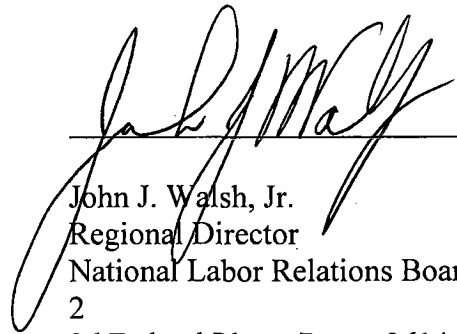
Pursuant to Section 102.69(c)(2) of the Board's Rules and Regulations, any party may file with the Board in Washington, DC, a request for review of this Order Directing Second Election, which may be combined with a request for review of the regional director's decision to direct an election as provided in Sections 102.67(c) and 102.69(c)(2), if not previously filed. The request for review must conform to the requirements of Sections 102.67(e) and (i)(1) of the Board's Rules and may be filed at any time following this decision until 14 days after a final disposition of the proceeding by the regional director. If no request for review is filed, the decision is final and shall have the same effect as if issued by the Board.

A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to www.nlr.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A party filing a request for review must serve a copy of the

request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Under the provisions of Section 102.69(g) of the Board's Rules, documentary evidence, including affidavits, which a party has timely submitted to the Regional Director in support of its objections or challenges and that are not included in the Report on Objections and Challenges, is not part of the record before the Board unless appended to the exceptions or opposition thereto that the party files with the Board. Failure to append to the submission to the Board copies of evidence timely submitted to the Regional Director and not included in the Report on Objections and Challenges shall preclude a party from relying on that evidence in any subsequent related unfair labor practice proceeding.

Signed at New York, New York
November 30, 2018



John J. Walsh, Jr.
Regional Director
National Labor Relations Board, Region
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New York, New York 10278-0104